NO. 88-2025

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RONDALEE H. KING,

Petitioner,

vs.

STATE OF KANSAS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

John W. Campbell
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ATTORNEY FOR RESPONDENT

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REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioner's Writ of Certiorari should be denied as a final judgement by the highest court in the state has not yet occurred. The Petitioner has yet to stand trial for the charges of felony possession of narcotic drugs with intent to sell, K.S.A. 65-4127b and possession of marijuana, K.S.A. 65-4127b(a)(3). Petitioner is presently awaiting trial in the District Court of Reno County, Kansas, on the named charges.

Petitioner seeks a Writ of Certiorari on decisions of the Kansas Court of Appeals and the Kansas Supreme Court as the result of an interlocutory appeal taken by the State of Kansas pursuant to K.S.A. 22-3601(a) and K.S.A. 22-3603. The Kansas Appellate Courts sustained the appeal of the State of Kansas which

allowed the criminal proceedings to move forward to trial.

Certain exceptions do exist where "finality" has been found on a federal issue where further state proceedings are pending. These exceptions are set out in Cox Broadcasting Corporation v. Cohn, 95 S. Ct. 1029, 420 U.S. 469, 43 L. Ed 2d 328 (1975). The applicable exception is as follows:

> "...where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive on any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal

> issue, which itself has been finally determined by the state courts for purposes of the state litigation."

Supra, 95 S. Ct. at 1040.

The state decisions on which review are sought determine the admissibility of evidence in a criminal proceeding. If Petitioner is acquitted on the criminal charges, review by the United States Supreme Court would be unnecessary. There is no allegation nor is there any basis for any allegation that an issue exists in this case that would seriously erode federal policy.

As indicated in Appendix B of Petitioner's Petition for Writ of Certiorari, the opinion of the Kansas Court of Appeals was not designated for publication. As the opinion was unpublished, the opinion is without value as precedent and cannot be cited as precedent by any court or in any brief or

other material presented to any court. Rule No. 7.04 of the Kansas Supreme Court. Therefore, the only effect of the decisions of the Kansas Appellate Court's in which review is being sought, is limited solely to one criminal case presently pending in the District Court of Reno County, Kansas.

Petitioner cites Supreme Court Rule 17.1(c) as a basis for jurisdiction:

> "when a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

Petitioner makes no claim that she seeks review of an important question of federal law which has not been, but should be, settled by this Court.

The question then becomes whether the state courts decided a federal question in

a way in conflict with applicable decisions of the United States Supreme Court. The decision made by the appellate courts of Kansas was that Petitioner did not have standing to object to the search of a pick-up truck and blue vinyl case in which she claimed no interest and was not present at the time of the search. Petitioner's Brief, Exhibit "B". Petitioner makes no claim that ruling was in error.

Petitioner apparently claims that the Kansas Court of Appeals and Kansas Supreme Court found that she did not have standing to object to the search of her motel room. Petitioner's Brief p. 7. No allegation or finding has ever been made that Petitioner did not have standing in relation to the motel room from which she was arrested. The issue decided was the evidence from the search of the pick-up

truck in which Petitioner did not have standing to object to did not taint the later search of the motel room.

Petitioner's basic argument is that it isn't fair that the co-defendant had the evidence suppressed because he had standing and that evidence wasn't suppressed against the Petitioner because she did not have standing. Contrary to Petitioner's position, that is the law according to the holding in Wong Sun v. United States, 371 U.S. 471, 9 L. Ed 2d 441, 83 S. Ct. 407 (1963).

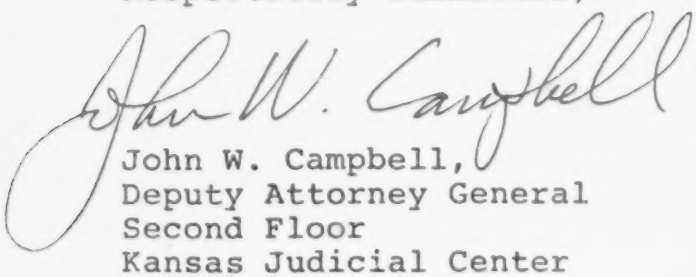
Petitioner also makes mention of false swearing in the affidavit for search warrant presented to the magistrate. Petitioner has not raised this issue at the trial level and now asks this Court to decide this newly raised issue on first impression. Petitioner should litigate

this issue at the state level under applicable state and federal law.

CONCLUSION

Petitioner's Writ of Certiorari should be denied as there has not seen final judgment at the State level. Also, the jurisdictional requirements of Rule 17.1(c) have not been met and Petitioner's Writ should be denied.

Respectfully submitted,



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VS.

STATE OF KANSAS,

Respondent.

AFFIDAVIT OF TIMELY FILING

STATE OF KANSAS)
)
COUNTY OF SEDGWICK)

John W. Campbell, Attorney for the Respondent and a member of the Bar of the United States Supreme Court, pursuant to S. Ct. Rule 28.2, states that to his knowledge, 40 copies of the Brief in Opposition to the Petition for Writ of Certiorari in the above-styled case were

deposited in the United States mail, first class postage prepaid, addressed to:

Joseph Spaniol
Clerk of the Supreme Court
Supreme Court Building
Washington, D.C. 20543

on the 13th day of September, 1989, within the permitted time for filing.

John W. Campbell

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ATTORNEY FOR RESPONDENT

SWORN TO AND SUBSCRIBED before me on this 12th day of September, 1989.



Sue Baxter
NOTARY PUBLIC

My commission expires:
September 15, 1990

NO. 88-2025

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RONDALEE H. KING,

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CERTIFICATE OF SERVICE

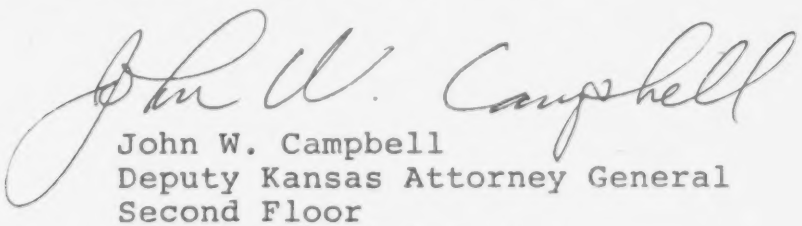
STATE OF KANSAS)
)
COUNTY OF SEDGWICK)

John W. Campbell, Attorney for the Respondent and a member of the Bar of the United States Supreme Court, states that to his knowledge, 3 copies of the Brief in Opposition to Petition for Writ of Certiorari in the above-styled case were

deposited in the United States mail, first class postage prepaid, addressed to:

Richard Rome
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P.O. Box 964
Hutchinson, Kansas 67501-0964

on the 13th day of September, 1989.



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